

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KIMBERLY C. CUTONE and
ANTHONY CUTONE,

Plaintiffs,

v.

ELI LILLY AND COMPANY,

Defendant.

CIVIL ACTION No. 04-CV-12725 (JLT)

**DEFENDANT ELI LILLY AND COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, defendant Eli Lilly and Company ("Lilly") hereby moves for summary judgment on all of Plaintiffs' claims. As explained more fully in Lilly's accompanying Memorandum of Points and Authorities In Support of Its Motion for Summary Judgment, Lilly is entitled to summary judgment as to all of Plaintiffs' claims because Plaintiffs have failed as a matter of law to show that Lilly made the DES to which Plaintiff Kimberly CUTone was allegedly exposed.

WHEREFORE, Lilly respectfully requests that its Motion for Summary Judgment be granted.

REQUEST FOR ORAL ARGUMENT

Pursuant to L.R. 7.1, Lilly hereby requests a hearing on this motion.

Respectfully submitted,

ELI LILLY AND COMPANY

/s/ James J. Dillon

James J. Dillon (BBO # 124660)
 Brian L. Henninger (BBO # 657926)
 Foley Hoag LLP
 155 Seaport Boulevard
 World Trade Center West
 Boston, MA 02110-2600
 (617) 832-1000

Dated: May 1, 2006

Certificate of Service

I hereby certify that these documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non registered participants on May 1, 2006.

Aaron M. Levine, Esq. Aaron M. Levine & Associates 1320 19 th Street, N.W. Suite 500 Washington, D.C. 20036 Attorney for Plaintiffs	Sheila Mone Kenneth M. Levine & Associates 370 Washington Street Boston, MA 02445 Attorney for Plaintiffs
Juliet A. Davidson Todd& Weld 28 State Street Boston, MA 02109 Attorney for Plaintiffs	Erica Tennyson Todd & Weld 28 State Street Boston, MA 02109 Attorney for Plaintiffs

/s/ James J. Dillon
 James J. Dillon (BBO # 124660)